

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Civ. No.

v.

EDWARDS OIL SERVICE, INC.

Defendant.

COMPLAINT

The United States of America ("United States"), by authority of the Attorney General of the United States and through the undersigned attorneys, acting on behalf of the United States Environmental Protection Agency ("U.S. EPA"), alleges as follows:

NATURE OF ACTION

1. This is a civil action under Section 3008(a) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), 42 U.S.C. § 6928(a), and Section 311(e) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act ("CWA"), 33 U.S.C. § 1321(e), as amended by the Oil Pollution Act of 1990, in which the United States seeks injunctive relief and civil penalties for Edwards Oil Service, Inc.'s ("Edwards" or "Defendant") violations of the RCRA, CWA and various federal and state regulations promulgated thereunder at Edwards' used oil and hazardous waste treatment facility in Detroit, Wayne County, Michigan ("Edwards' Facility" or "Facility").

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to

RCRA Section 3008(a), 42 U.S.C. § 6928(a); CWA Section 311 (e), 33 U.S.C. § 1321(e); and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this District because it is the judicial district in which Edwards does business, where Edwards' Facility is located, and where the alleged violations occurred. See RCRA Section 3008(a), 42 U.S.C. § 6928(a); CWA Sections 309(b) and 311 (e), 33 U.S.C. §§ 1319(b) and 1321(e), and 28 U.S.C. §§ 1391(b) and 1395.

4. The United States has given notice of the commencement of this action to the State of Michigan.

THE PARTIES

5. Plaintiff is the United States of America. Authority to bring this action is vested in the United States pursuant to 28 U.S.C. §§ 516 and 519, 42 U.S.C. § 6928, and 33 U.S.C. § 1366.

6. Defendant Edwards Oil Service, Inc. is a corporation organized under the laws of the State of Michigan which owns and operates a used oil processing facility at 530 South Rouge Avenue, Detroit, Michigan. At all times relevant to this complaint, Edwards has been a "person" within the meaning of RCRA Section 1004(15), 42 U.S.C. § 6903(15), and CWA Sections 311(a)(7) and 502(5), 33 U.S.C. § 1321(a)(7) and 1362(5).

7. At all times relevant to this Complaint, Edwards has owned, leased, operated or otherwise controlled the Facility and the real property upon which it lies.

8. At all times relevant to this Complaint, Edwards has engaged in the "treatment," "storage," and/or "disposal" of "hazardous waste" at the Facility, as those terms are defined in RCRA Section 1004, 42 U.S.C. § 6903, and 40 C.F.R. § 260.10.

STATUTORY AND REGULATORY BACKGROUND

Resource Conservation and Recovery Act - - Used Oil Management

9. In 1976, Congress enacted RCRA as an amendment to the Solid Waste Disposal Act, to regulate hazardous waste management. RCRA established a comprehensive federal regulatory program applicable to the generation, transportation, storage, treatment, and disposal of hazardous waste. 42 U.S.C. § 6901 et seq.

10. Pursuant to RCRA Sections 3004 and 3014, 42 U.S.C. §§ 6924 and 6935, U.S. EPA promulgated regulations at 40 C.F.R. Part 279, Subparts E, F, and H establishing federal standards for used oil, used oil transporters, used oil processors/re-refiners, and used oil fuel marketers.

11. Pursuant to RCRA Section 3006, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to RCRA Subtitle C, i.e., RCRA Sections 3001-3023, 42 U.S.C. §§ 6921-6939, or of any state code provision or rule authorized under RCRA Section 3006, 42 U.S.C. § 6926, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in RCRA Section 3008, 42 U.S.C. § 6928.

12. Pursuant to RCRA Section 3006(b), 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Michigan final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective October 30, 1986. 51 Fed. Reg. 36804 (October 16, 1986). See 40 C.F.R. § 272.1150. U.S. EPA granted Michigan

final authorization to administer certain requirements of the Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616, 98 Stat. 3221 ("HSWA"), and additional RCRA requirements, effective January 23, 1990, 54 Fed. Reg. 48608 (November 24, 1989); June 24, 1991, 56 Fed. Reg. 18517 (April 23, 1991); November 30, 1993, 58 Fed. Reg. 51244 (October 1, 1993); April 8, 1996, 61 Fed. Reg. 4742 (February 8, 1996); and December 28, 1998, 63 Fed. Reg. 57912 (October 29, 1998) (stayed and corrected effective June 1, 1999, 64 Fed. Reg. 10111 (March 2, 1999)). The U.S. EPA-authorized Michigan regulations are codified at Michigan Administrative Code ("Mich. Admin. Code") rules 299.9101 *et seq.* See also 40 C.F.R. § 272.1151 *et seq.*

13. Mich. Admin. Code rule 299.9109(o) provides that "used oil" means "any oil that has been refined from crude oil, or any synthetic oil, which has been used and which as a result of the use, is contaminated by physical or chemical impurities."

14. Mich. Admin. Code rule 299.9106(r), provides that "processing" means "chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. That rule further provides that "processing" includes all of the following: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining."

15. Mich. Admin. Code rule 299.9109(v) provides that "used oil fuel marketer" means "any person who conducts either of the following activities: (i) directs a shipment of off-specification used oil from his or her facility to a used oil burner; (ii) first claims that the used oil which is to be burned for energy recovery meets the used oil fuel specification set forth in [Mich.

Admin. Code] R 299.9809(1)(f).”

16. Edwards is a used oil "fuel marketer" within the meaning of Mich. Admin. Code rule 299.9109(y).

17. Mich. Admin. Code rule 299.9109(y) provides that “used oil processor/re-refiner” means “a facility that processes used oil.”

18. Edwards is a used oil "processor" within the meaning of Mich. Admin. Code rule 299.9109(y).

19. Mich. Admin. Code rule 299.9813(3) provides: “an owner or operator of a facility that processes used oil shall comply with the provisions of 40 C.F.R. §§ 279.51, 279.52, 279.54, 279.55, 279.56, 279.57, and 279.58, except 279.54(a).”

20. 40 C.F.R. § 279.54(b)(2) provides that containers and aboveground tanks used to store or process used oil at processing and re-refining facilities must not leak (no visible leaks).

21. 40 C.F.R. § 279.54(d) provides that existing aboveground tanks used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system. In addition, 40 C.F.R. § 279.54(d)(2) provides that the entire secondary containment system including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

22. 40 C.F.R. § 279.54(f)(1) provides that containers and aboveground tanks used to store or process used oil at processing and re-refining facilities must be labeled or marked clearly with the words “Used Oil.”

23. 40 C.F.R. § 279.55 provides that owners or operators of used oil processing and

re-refining facilities must develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of 40 C.F.R. § 279.53 and, if applicable, 40 C.F.R. § 279.72. Section 279.55 further provides that the owner or operator must keep such plan at the facility.

24. Under 40 C.F.R. § 279.55(b)(2)(iv), if 40 C.F.R. § 279.72 (which concerns determinations as to whether on-specification used fuel oil meets the fuel specifications of 40 C.F.R. § 279.11) is applicable to a facility, the analysis plan required under 40 C.F.R. § 279.55, must specify the methods used to analyze used oil for the parameters specified in 40 C.F.R. § 279.72.

25. Under RCRA Section 3008(g), 42 U.S.C. § 6928(g), any person who violates any requirement of RCRA Subchapter III, 42 U.S.C. §§ 6921-6939(b), is liable for civil penalties in an amount not to exceed \$25,000 per day per violation for violations occurring prior to January 30, 1997, and is liable for civil penalties in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997. RCRA Section 3008(g), 42 U.S.C. § 6928(g), as amended by Pub. L. No. 104-134. See 62 Fed. Reg. 13,514 (March 20, 1997).

Clean Water Act - - Spill Prevention Control and Countermeasures:

26. CWA Section 311(j)(1), 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations "(C) establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges"

27. The functions vested in the President by CWA Section 311 (j)(1)(C), 33 U.S.C.

§ 1321(j)(1)(C), have been delegated to the Administrator of U.S. EPA. See Exec. Order No. 12,777, 56 Fed. Reg. 54,757 (1991).

28. CWA Section 311(b)(7)(C), 33 U.S.C. § 1321(b)(7)(C), provides that any person who fails or refuses to comply with any regulation issued under CWA Section 311(j), 33 U.S.C. § 1321(j), shall be subject to a civil penalty not to exceed \$25,000 per day for each violation occurring prior to January 30, 1997, and \$27,500 per day per violation for violations occurring on or after January 30, 1997. CWA Section 311(b)(7)(C), 33 U.S.C. § 1321(b)(7)(C), as amended by Pub. L. No. 104-134; See 62 Fed. Reg. 13,514 (March 20, 1997).

29. The regulations promulgated pursuant to CWA Section 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C), include those set forth at 40 C.F.R. Part 112, entitled "Oil Pollution Prevention."

30. 40 C.F.R. Part 112 establishes procedures, methods and requirements to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable waters of the United States and adjoining shorelines. 40 C.F.R. § 112.1(a). The regulations generally apply to the owners or operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, or consuming oil and oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. Part 110, into or upon the navigable waters of the United States or adjoining shorelines. See 40 C.F.R. § 112.1(b).

31. The Edwards Facility is an "onshore facility" within the meaning of CWA Section 311(a)(10), 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2.

32. Edwards Oil Service, Inc. is an "owner or operator" within the meaning of CWA

Section 311(a)(6), 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

33. 40 C.F.R. Part 112 applies to those facilities that are subject to the jurisdiction of U.S. EPA, and meet the following criteria: (i) the underground buried storage capacity of the facility exceeds 42,000 gallons of oil; (ii) the storage capacity, which is not buried, of the facility exceeds 1,320 gallons of oil; or (iii) the storage capacity, which is not buried, of the facility is 1,320 gallons or less of oil, but a single container has a capacity in excess of 660 gallons.

40 C.F.R. § 112.1(d)(2).

34. The Edwards Facility has an aboveground storage capacity of more than 1,320 gallons of oil.

35. 40 C.F.R. § 112.3 establishes the requirements for preparation of Spill Prevention Control and Countermeasure Plans ("SPCC Plans").

36. 40 C.F.R. § 112.7 establishes guidelines for the preparation and implementation of SPCC plans. In particular, 40 C.F.R. § 112.7 provides that a complete SPCC Plan shall include a discussion of the facility's conformance with the guidelines set forth in 40 C.F.R. § 112.7, including but not limited to the following:

a. Appropriate containment and/or diversionary structures or equipment to prevent discharged oil from reaching a navigable water course should be provided. In regard to onshore facilities, one of the following preventive systems or its equivalent should be used as a minimum: (1) dikes, berms, or retaining walls sufficiently impervious to contain spilled oil; (2) curbing; (3) culverting, gutters or other drainage systems; (4) weirs, booms or other barriers; (5) spill diversion ponds; (6) retention ponds; (7) sorbent materials.

40 C.F.R. § 112.7(c).

37. In addition to the minimal prevention standards listed under section 112.7(c), 40 C.F.R. § 112.7(e) provides that an SPCC Plan should include a complete discussion of

conformance with various guidelines, including those set forth below:

a. 40 C.F.R. § 112.7(e)(1)(iii), which concerns “facility drainage (onshore) (excluding production facilities),” provides in part, “plant drainage systems from undiked areas should, if possible, flow into ponds, lagoons or catchment basins, designed to retain oil or return it to the facility.” 40 C.F.R. § 112.7(e)(1)(iii);

b. 40 C.F.R. § 112.7(e)(2), which concerns “bulk storage tanks (onshore); (excluding production facilities),” provides:

* * * *

(ii) All bulk storage tank installations should be constructed so that a secondary means of containment is provided for the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation. Diked areas should be sufficiently impervious to contain spilled oil. Dikes, containment curbs, and pits are commonly employed for this purpose, but they may not always be appropriate. An alternative system could consist of a complete drainage trench enclosure arranged so that a spill could terminate and be safely confined in an in-plant catchment basin or holding pond.

(iii) Drainage of rainwater from the diked area into a storm drain or an effluent discharge that empties into an open water course, lake, or pond, and bypassing the in-plant treatment system may be acceptable if:

(A) The bypass valve is normally sealed closed.

(B) Inspection of the run-off rain water ensures compliance with applicable water quality standards and will not cause a harmful discharge as defined in 40 CFR Part 110.

(C) The bypass valve is opened, and resealed following drainage under responsible supervision.

(D) Adequate records are kept of such events.

* * * *

(v) Partially buried metallic tanks for the storage of oil should be avoided, unless the buried section of the shell is adequately coated, since partial burial in damp

earth can cause rapid corrosion of metallic surfaces, especially at the earth/air interface.

(vi) Aboveground tanks should be subject to periodic integrity testing, taking into account tank design (floating roof, etc.) and using such techniques as hydrostatic testing, visual inspection or a system of non-destructive shell thickness testing. Comparison records should be kept where appropriate, and tank supports and foundations should be included in these inspections. In addition, the outside of the tank should frequently be observed by operating personnel for signs of deterioration, leaks which might cause a spill, or accumulation of oil inside diked areas.

* * * *

(viii) New and old tank installations should, as far as practical, be fail- safe engineered or updated into a fail-safe engineered installation to avoid spills. Consideration should be given to providing one or more of the following devices:

(A) High liquid level alarms with an audible or visual signal at a constantly manned operation or surveillance station; in smaller plants an audible air vent may suffice.

(B) Considering size and complexity of the facility, high liquid level pump cutoff devices set to stop flow at a predetermined tank content level.

(C) Direct audible or code signal communication between the tank gauger and the pumping station.

(D) A fast response system for determining the liquid level of each bulk storage tank such as digital computers, telepulse, or direct vision gauges or their equivalent.

(E) Liquid level sensing devices should be regularly tested to insure proper operation.

* * * *

(xi) Mobile or portable oil storage tanks (onshore) should be positioned or located so as to prevent spilled oil from reaching navigable waters. A secondary means of containment, such as dikes or catchment basins, should be furnished for the largest single compartment or tank. These facilities should be located where they will not be subject to periodic flooding or washout.

c. 40 C.F.R. § 112.7(e)(3), which concerns “facility transfer operation, pumping, and in-plant process (onshore)(excluding production facilities),” provides:

(i) Buried piping installations should have a protective wrapping and coating and should be cathodically protected if soil conditions warrant. If a section of buried line is exposed for any reason, it should be carefully examined for deterioration. If corrosion damage is found, additional examination and corrective action should be taken as indicated by the magnitude of the damage. An alternative would be the more frequent use of exposed pipe corridors or galleries.

* * * *

(v) Vehicular traffic granted entry into the facility should be warned verbally or by appropriate signs to be sure that the vehicle, because of its size, will not endanger above ground piping.

d. 40 C.F.R. § 112.7(e)(4), which concerns “facility tank car and tank truck loading/unloading rack (onshore),” provides in part:

(ii) Where rack area drainage does not flow into a catchment basin or treatment facility designed to handle spills, a quick drainage system should be used for tank truck loading and unloading areas. The containment system should be designed to hold at least maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded in the plant.

(iii) An interlocked warning light or physical barrier system, or warning signs, should be provided in loading/unloading areas to prevent vehicular departure before complete disconnect of flexible or fixed transfer lines.

e. 40 C.F.R. § 112(e)(8), which concerns “inspections and records,” provides:

Inspections required by this part should be in accordance with written procedures developed for the facility by the owner or operator. These written procedures and a record of the inspections, signed by the appropriate supervisor or inspector, should be made part of the SPCC Plan

f. 40 C.F.R. § 112(e)(9), which concerns “security (excluding oil production facilities),” provides in part:

(ii) The master flow and drain valves and any other valves that will permit direct outward flow of the tank's content to the surface should be securely locked in the closed position when in non-operating or non-standby status.

g. 40 C.F.R. § 112(e)(10), which concerns “personnel, training and spill prevention procedures,” provides in part:

(iii) Owners or operators should schedule and conduct spill prevention briefings for their operating personnel at intervals frequent enough to assure adequate understanding of the SPCC Plan for that facility. Such briefings should highlight and describe known spill events or failures, malfunctioning components, and recently developed precautionary measures.

38. CWA Section 502(7) defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). 40 C.F.R. § 232.2 defines “Waters of the United States” as:

All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce

All interstate waters including interstate wetlands.

All other waters, such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which would or could affect interstate or foreign commerce, including any such waters:

Which are or could be used by interstate or foreign travelers for recreational or other purposes; or

From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

Which are used or could be used for industrial purposes by industries in interstate commerce.

All impoundments of waters otherwise defined as waters of the United States under this definition;

* * * *

The territorial sea;

Wetlands adjacent to waters (other than waters that are themselves

wetlands) identified in . . . this section.

39. The northeast corner of the Edwards’ Facility is located approximately 300 feet southwest of the Rouge River. The Rouge River flows into the Detroit River via a canal. The Rouge River is a navigable water of the United States as defined in CWA Section 502(7), 33

U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

40. The Edwards Facility, due to its location near the Rouge River, could reasonably be expected to discharge oil in harmful quantities to the Rouge River, a navigable water of the United States, or its adjoining shoreline.

41. At all times relevant to this complaint, Edwards Oil Service, Inc. has engaged in producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products at its Facility.

42. Edwards Oil Service, Inc. has prepared an SPCC Plan for the Facility which was last certified on August 12, 1998.

43. The Edwards Facility is a non-transportation-related facility under the definition incorporated by reference at 40 C.F.R. § 112.2 and 40 C.F.R. Part 112, Appendix A.

Allegations Pertaining to RCRA and CWA Violations

Violations of RCRA

44. On June 16-17, 1999, and July 7, 1999, U.S. EPA inspected the Edwards Facility to determine Edwards' compliance with the Resource Conservation and Recovery Act, and observed the following violations:

a. Tank 52, which Edwards used to store or process used oil at its Facility, was leaking oil onto the ground, which is a violation of Mich. Admin. Code rule 299.9813(3) and 40 C.F.R. § 279.54(b)(2);

b. The secondary containment system walls of approximately 41 aboveground used oil storage tanks at the Edwards Facility were not sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the

soil, groundwater, or surface water, which is a violation of Mich. Admin. Code rule 299.9813(3), and 40 C.F.R. § 279.54(d)(2);

c. Approximately 41 aboveground tanks and one container, which Edwards used to store or process used oil at its Facility, were not labeled or marked with the words "Used Oil," which is a violation of Mich. Admin. Code rule 299.9813(3), and 40 C.F.R. § 279.54(f);

d. Edwards' waste analysis plan did not include the methods used to analyze on-specification used oil fuel, which is a violation of Mich. Admin. Code rule 299.9813(3), and 40 C.F.R. § 279.55(b)(2)(iv) .

Violations of CWA/SPCC Requirements

45. On November 10, 1998, and December 1-2, 1998, U.S. EPA inspected the Edwards Facility to determine Edwards' compliance with the Clean Water Act, and specifically the Spill Prevention Control and Countermeasure requirements, and observed the following violations:

a. The secondary containment structures for approximately 41 aboveground storage tanks were not sufficient to prevent the discharge of oil to a navigable waterway, which is a violation of 40 C.F.R. § 112.7(c) and (e)(2)(ii);

b. Approximately ten undiked areas that flowed into catchment basins were not designed to retain oil or return the oil to the Facility, which is a violation of 40 C.F.R. § 112.7(e)(1)(3);

c. Four diked areas were not sufficiently impervious to contain spilled oil, which is a violation of 40 C.F.R. § 112.7(e)(2)(ii);

d. Three metallic tanks were not adequately coated, which is a violation of 40

C.F.R. § 112.7(e)(2)(v);

e. The Facility's SPCC Plan failed to state whether all of the aboveground tanks would be subject to periodic integrity testing, which is a violation of 40 C.F.R. § 112.7(e)(2)(vi);

f. The Facility's SPCC Plan failed to state whether its new and old tank installations were fail-safe engineered, which is a violation of 40 C.F.R. § 112.7(e)(2)(viii);

g. Edwards operated approximately one mobile storage tank (tanker truck) which was not positioned or located so as to prevent spilled oil from reaching navigable waters, which is a violation of 40 C.F.R. § 112.7(e)(2)(xi);

h. The Facility's SPCC Plan failed to state whether the Facility's buried piping installations are wrapped or coated to reduce corrosion, which is a violation of 40 C.F.R. § 112.7(e)(3)(i);

i. Edwards' SPCC Plan failed to state that vehicular traffic will be warned about aboveground piping at the Facility, which is a violation of 40 C.F.R. § 112.7(e)(3)(v);

j. Edwards operated approximately seven loading/unloading areas at the Facility that were not designed to handle oil spills from tank cars or trucks, which is a violation of 40 C.F.R. § 112.7(e)(4)(ii);

k. Edwards' SPCC Plan did not state that interlocked warning lights, physical barriers stems or warning signs are provided at the Facility's loading/unloading areas, which is a violation of 40 C.F.R. § 112.7(e)(4)(iii);

l. Edwards SPCC Plan did not include records of inspections, which is a violation of 40 C.F.R. § 112.7(e)(8);

m. Edwards' SPCC Plan failed to state that all drain valves are securely locked

when such valves are in non-operating and non-standby status, which is a violation of 40 C.F.R. § 112.7(e)(9)(ii); and

n. Edwards' SPCC Plan failed to state when Edwards conducted its previous spill prevention briefing, which is a violation of 40 C.F.R. § 112.7(e)(10)(iii).

FIRST CLAIM FOR RELIEF

LEAKING STORAGE TANK

46. Paragraphs 1 through 25, and 44 inclusive, are realleged and incorporated herein by reference.

47. For a period of time known best to the Defendant, but including at least the period June 17, 1999 through July 7, 1999, Tank 52 at Defendant's facility was leaking oil.

48. Defendant's failure to prevent Tank 52 from leaking oil constitutes a violation of Mich. Admin. Code rule 299.9813(3) and 40 C.F.R. § 279.54(b)(2).

49. RCRA Section 3008(a), 42 U.S.C. § 6928(a), authorizes U.S. EPA to enforce state regulations in those states authorized to administer a hazardous waste program.

50. Unless enjoined by Order of this Court, Defendant's violations of Mich. Admin. Code rule 299.9813(3), 40 C.F.R. § 279.54(b)(2), and RCRA alleged in this claim for relief will continue.

51. As a result of its violations of RCRA, Defendant is liable for a civil penalty in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997.

SECOND CLAIM FOR RELIEF

SECONDARY CONTAINMENT SYSTEM DEFICIENCY

52. Paragraphs 1 through 25, and 44 inclusive, are realleged and incorporated herein by reference.

53. For a period of time known best to the Defendant, but including at least the period June 17, 1999 through July 7, 1999, the secondary containment system walls of approximately 41 aboveground used oil storage tanks at the Edwards facility were not sufficiently impervious to used oil to prevent any used oil released into the environment from migrating out of the system to the soil, groundwater, or surface water. Defendant's failure to maintain sufficiently impervious secondary containment system walls for its aboveground used oil tanks constitutes a violation of Mich. Admin. Code rule 299.9813(3), and 40 C.F.R. § 279.54(d)(2).

54. RCRA Section 3008(a), 42 U.S.C. § 6928(a), authorizes U.S. EPA to enforce state regulations in those states authorized to administer a hazardous waste program.

55. Unless enjoined by Order of this Court, Defendant's violations of Mich. Admin. Code rule 299.9813(3), 40 C.F.R. § 279.54(d)(2), and RCRA alleged in this claim for relief will continue.

56. As a result of its violations of RCRA, Defendant is liable for a civil penalty in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997.

THIRD CLAIM FOR RELIEF

FAILURE TO LABEL OIL STORAGE TANKS

57. Paragraphs 1 through 25 and 44 inclusive, are realleged and incorporated herein

by reference.

58. For a period of time known best to the Defendant, but including at least the period June 17, 1999 through July 7, 1999, approximately 41 aboveground tanks and one container, which Defendant uses to store or process used oil at its Facility, were not labeled or marked with the words "Used Oil." Defendant's failure to so label or mark its aboveground tanks and container constitutes a violation of Mich. Admin. Code rule 299.9813(3), and 40 C.F.R. § 279.54(f).

59. RCRA Section 3008(a), 42 U.S.C. § 6928(a), authorizes U.S. EPA to enforce state regulations in those states authorized to administer a hazardous waste program.

60. Unless enjoined by Order of this Court, Defendant's violations of Mich. Admin. Code rule 299.9813(3), 40 C.F.R. § 279.54(f) and RCRA, as alleged in this claim for relief will continue.

61. As a result of its violations of RCRA, Defendant is liable for a civil penalty in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997.

FOURTH CLAIM FOR RELIEF

WASTE ANALYSIS PLAN DEFICIENCY

62. Paragraphs 1 through 25, and 44 inclusive, are realleged and incorporated herein by reference.

63. For a period of time known best to the Defendant, but including at least the period June 17, 1999 through July 7, 1999, Defendant's waste analysis plan did not include the methods used to analyze on-specification used oil fuel. Defendant's failure to include this information in

its waste analysis plan is a violation of Mich. Admin. Code rule 299.9813(3), and 40 C.F.R. § 279.55(b)(2)(iv).

64. RCRA Section 3008(a), 42 U.S.C. § 6928(a), authorizes U.S. EPA to enforce state regulations in those states authorized to administer a hazardous waste program.

65. Unless enjoined by Order of this Court, Defendant's violations of Mich. Admin. Code rule 299.9813(3), 40 C.F.R. § 279.55(b)(2)(iv), and RCRA alleged in this claim for relief will continue.

66. As a result of its violations of RCRA, Edwards is liable for a civil penalty in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997.

FIFTH CLAIM FOR RELIEF

SECONDARY CONTAINMENT STRUCTURE DEFICIENCIES

67. Paragraphs 1 through 8, 26 through 43, and 45, are realleged and incorporated herein by reference.

68. For a period of time known best to the Defendant, but including at least the period November 10, 1998 through December 1, 1998, the secondary containment and/or diversionary structures or equipment for approximately 41 aboveground tanks at Defendant's Facility were not sufficient to prevent discharged oil from reaching a navigable water course. Defendant's failure to insure that such structures or equipment were sufficient to prevent discharged oil from reaching a navigable water course constitutes a violation of CWA Section 311(j)(1)(c), 33 U.S.C. § 1321(j)(1)(c), and 40 C.F.R. § 112.7(c) and (e)(2)(ii).

69. Unless enjoined by Order of this Court, Defendant's violations of the Clean Water

Act and 40 C.F.R. § 112.7(c) and (e)(2)(ii) alleged in this claim for relief will continue.

70. As a result of its violations of CWA, Edwards is liable for a civil penalty in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997.

SIXTH CLAIM FOR RELIEF

PLANT DRAINAGE SYSTEM DEFICIENCIES

71. Paragraphs 1 through 8, 26 through 43, and 45, are realleged and incorporated herein by reference.

72. For a period of time known best to the Defendant, but including at least the period November 10, 1998 through December 1, 1998, approximately ten undiked storage areas that flowed into catchment basins were not designed to retain oil or return oil to Defendant's Facility. Defendant's failure to insure that such areas were sufficiently designed to retain oil or return oil to Defendant's facility constitutes a violation of CWA Section 311(j)(1)(c), 33 U.S.C. § 1321(j)(1)(c), and 40 C.F.R. § 112.7(e)(1)(3).
herein by reference.

73. Unless enjoined by Order of this Court, Defendant's violations of the Clean Water Act and 40 C.F.R. § 112.7(e)(1)(3) alleged in this claim for relief will continue.

74. As a result of its violations of CWA, Edwards is liable for a civil penalty in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997.

SEVENTH CLAIM FOR RELIEF

75. Paragraphs 1 through 8, 26 through 43, and 45, are realleged and

incorporated herein by reference.

76. For a period of time known best to the Defendant, but including at least the period November 10, 1998 through December 1, 1998, four diked areas at Defendant's Facility were not sufficiently impervious to contain spill oil. Defendant's failure to implement diking that is impervious to oil constitutes a violation of CWA Section 311(j)(1)(c), 33 U.S.C. § 1321(j)(1)(c), and 40 C.F.R. § 112.7(e)(2)(ii).

72. Unless enjoined by Order of this Court, Defendant's violations of the Clean Water Act and 40 C.F.R. § 112.7(e)(2)(ii) alleged in this claim for relief will continue.

73. As a result of its violations of CWA, Defendant is liable for a civil penalty in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997.

EIGHTH CLAIM FOR RELIEF

74. Paragraphs 1 through 8, 26 through 43, and 45, are realleged and incorporated herein by reference.

75. For a period of time known best to the Defendant, but including at least the period November 10, 1998 through December 1, 1998, three metallic tanks at Defendant's Facility were not adequately coated. Defendant's failure to adequately coat its metallic tanks constitutes a violation of CWA Section 311(j)(1)(c), 33 U.S.C. § 1321(j)(1)(c), and 40 C.F.R. § 112.7(e)(2)(v).

76. Unless enjoined by Order of this Court, Defendant's violations of the Clean Water Act and 40 C.F.R. § 112.7(e)(2)(v) alleged in this claim for relief will continue.

77. As a result of its violations of CWA, Defendant is liable for a civil penalty in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January

30, 1997.

NINTH CLAIM FOR RELIEF

78. Paragraphs 1 through 8, 26 through 43, and 45, are realleged and incorporated herein by reference.

79. For a period of time known best to the Defendant, but including at least the period November 10, 1998 through December 1, 1998, Defendant's SPCC Plan did not state whether all of its aboveground tanks are subject to periodic integrity testing. Defendant's failure to state in its SPCC Plan whether all of its aboveground tanks are subject to periodic integrity testing constitutes a violation of CWA Section 311(j)(1)(c), 33 U.S.C. § 1321(j)(1)(c), and 40 C.F.R. § 112.7(e)(2)(vi).

80. Unless enjoined by Order of this Court, Defendant's violations of the Clean Water Act and 40 C.F.R. § 112.7(e)(2)(vi) alleged in this claim for relief will continue.

81. As a result of its violations of CWA, Defendant is liable for a civil penalty in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997.

TENTH CLAIM FOR RELIEF

82. Paragraphs 1 through 8, 26 through 43, and 45, are realleged and incorporated herein by reference.

83. For a period of time known best to the Defendant, but including at least the period November 10, 1998 through December 1, 1998, Defendant's SPCC Plan did not state whether its new and old tank installations were fail-safe engineered. Defendant's failure to state in its SPCC Plan whether its new and old tank installations were fail-safe engineered constitutes a

violation of CWA Section 311(j)(1)(c), 33 U.S.C. § 1321(j)(1)(c), and 40 C.F.R. § 112.7(e)(2)(viii).

84. Unless enjoined by Order of this Court, Defendant's violations of the Clean Water Act and 40 C.F.R. § 112.7(e)(2)(viii) alleged in this claim for relief will continue herein by reference.

85. As a result of its violations of CWA, Defendant is liable for a civil penalty in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997.

ELEVENTH CLAIM FOR RELIEF

86. Paragraphs 1 through 8, 26 through 43, and 45, are realleged and incorporated herein by reference.

87. For a period of time known best to the Defendant, but including at least the period November 10, 1998 through December 1, 1998, Defendant failed to operate its mobile oil tanks so as to prevent spilled oil from reaching navigable waters. Defendant's failure to operate its mobile oil tanks so as to prevent spilled oil from reaching navigable waters constitutes a violation of CWA Section 311(j)(1)(c), 33 U.S.C. § 1321(j)(1)(c), and 40 C.F.R. § 112.7(e)(2)(xi).

88. Unless enjoined by Order of this Court, Defendant's violations of the Clean Water Act and 40 C.F.R. § 112.7(e)(2)(vi) alleged in this claim for relief will continue.

89. As a result of its violations of CWA, Defendant is liable for a civil penalty in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997.

TWELFTH CLAIM FOR RELIEF

90. Paragraphs 1 through 8, 26 through 43, and 45, are realleged and incorporated herein by reference.

91. For a period of time known best to the Defendant, but including at least the period November 10, 1998 through December 1, 1998, Defendant's SPCC Plan failed to state whether its buried piping installations are wrapped or coated to reduce corrosion. Defendant's failure to state in its SPCC Plan whether its buried piping installations are wrapped or coated to reduce corrosion constitutes a violation of CWA Section 311(j)(1)(c), 33 U.S.C. § 1321(j)(1)(c), and 40 C.F.R. § 112.7(e)(3)(i).

92. Unless enjoined by Order of this Court, Defendant's violations of the Clean Water Act and 40 C.F.R. § 112.7(e)(3) alleged in this claim for relief will continue.

93. As a result of its violations of CWA, Defendant is liable for a civil penalty in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997.

THIRTEENTH CLAIM FOR RELIEF

94. Paragraphs 1 through 8, 26 through 43, and 45, are realleged and incorporated herein by reference.

95. For a period of time known best to the Defendant, but including at least the period November 10, 1998 through December 1, 1998, Defendant's SPCC plan failed to state that vehicular traffic will be warned about aboveground piping at the Facility. Defendant's failure to state in its SPCC plan that vehicular traffic will be warned about aboveground piping at the Facility constitutes a violation of CWA Section 311(j)(1)(c), 33 U.S.C. § 1321(j)(1)(c), and 40

C.F.R. § 112.7(e)(3)(v).

96. Unless enjoined by Order of this Court, Defendant's violations of the Clean Water Act and 40 C.F.R. § 112.7(e)(3)(v) alleged in this claim for relief will continue.

97. As a result of its violations of CWA, Defendant is liable for a civil penalty in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997.

FOURTEENTH CLAIM FOR RELIEF

98. Paragraphs 1 through 8, 26 through 43, and 45, are realleged and incorporated herein by reference.

99. For a period of time known best to the Defendant, but including at least the period November 10, 1998 through December 1, 1998, Defendant operated seven loading/unloading areas at its Facility that were not designed to handle oil spills from tank cars or trucks. Defendant's operation of loading/unloading areas that are not designed to handle spills from tank cars or trucks constitutes a violation of CWA Section 311(j)(1)(c), 33 U.S.C. § 1321(j)(1)(c), and 40 C.F.R. § 112.7(e)(4)(ii).

100. Unless enjoined by Order of this Court, Defendant's violations of the Clean Water Act and 40 C.F.R. § 112.7(e)(4)(ii) alleged in this claim for relief will continue.

101. As a result of its violations of CWA, Defendant is liable for a civil penalty in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997.

FIFTEENTH CLAIM FOR RELIEF

102. Paragraphs 1 through 8, 26 through 43, and 45, are realleged and incorporated

herein by reference.

103. For a period of time known best to the Defendant, but including at least the period November 10, 1998 through December 1, 1998, Defendant's SPCC plan failed to state that interlocked warning lights, physical barriers stems or warning signs are provided at the Facility's loading/unloading areas. Defendant's failure to state in its SPCC plan that interlocked warning lights, physical barriers stems or warning signs are provided at the Facility's loading/unloading areas constitutes a violation of CWA Section 311(j)(1)(c), 33 U.S.C. § 1321(j)(1)(c), and 40 C.F.R. § 112.7(e)(4)(iii).

104. Unless enjoined by Order of this Court, Defendant's violations of the Clean Water Act and 40 C.F.R. § 112.7(e)(4)(iii) alleged in this claim for relief will continue.

105. As a result of its violations of CWA, Defendant is liable for a civil penalty in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997.

SIXTEENTH CLAIM FOR RELIEF

106. Paragraphs 1 through 8, 26 through 43, and 45, are realleged and incorporated herein by reference.

107. For a period of time known best to the Defendant, but including at least the period November 10, 1998 through December 1, 1998, Defendant's SPCC plan did not include records of inspections. Defendant's failure to include records of inspections in its SPCC Plan constitutes a violation of CWA Section 311(j)(1)(c), 33 U.S.C. § 1321(j)(1)(c), and 40 C.F.R. § 112.7(e)(8).

108. Unless enjoined by Order of this Court, Defendant's violations of the Clean Water Act and 40 C.F.R. § 112.7(e)(8) alleged in this claim for relief will continue.

109. As a result of its violations of CWA, Defendant is liable for a civil penalty in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997.

SEVENTEENTH CLAIM FOR RELIEF

110. Paragraphs 1 through 8, 26 through 43, and 45, are realleged and incorporated herein by reference.

111. For a period of time known best to the Defendant, but including at least the period November 10, 1998 through December 1, 1998, Defendant's SPCC Plan failed to state that all of the Facility's drain valves are securely locked when in non-operating and non-standby status. Defendant's failure to state in its SPCC Plan that the Facility's drain valves are securely locked when in non-operating and non-standby status constitutes a violation of CWA Section 311(j)(1)(c), 33 U.S.C. § 1321(j)(1)(c), and 40 C.F.R. § 112.7(e)(9)(ii).

112. Unless enjoined by Order of this Court, Defendant's violations of the Clean Water Act and 40 C.F.R. § 112.7(e)(9)(ii) alleged in this claim for relief will continue.

113. As a result of its violations of CWA, Defendant is liable for a civil penalty in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997.

EIGHTEENTH CLAIM FOR RELIEF

114. Paragraphs 1 through 8, 26 through 43, and 45, are realleged and incorporated herein by reference.

115. For a period of time known best to the Defendant, but including at least the period

November 10, 1998 through December 1, 1998, Defendant's SPCC Plan failed to state the date of its previous spill prevention briefing. Defendant's failure to state in its SPCC Plan the date of its last spill prevention briefing constitutes a violation of CWA Section 311(j)(1)(c), 33 U.S.C. § 1321(j)(1)(c), and 40 C.F.R. § 112.7(e)(10)(iii).

116. Unless enjoined by Order of this Court, Defendant's violations of the Clean Water Act and 40 C.F.R. § 112.7(e)(10)(iii) alleged in this claim for relief will continue.

117. As a result of its violations of CWA, Defendant is liable for a civil penalty in an amount not to exceed \$27,500 per day per violation for violations occurring on or after January 30, 1997.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States respectfully requests that this Court:

1. Enjoin Defendant permanently from further violations of RCRA, CWA, and applicable regulations promulgated thereunder;
2. Order Defendant to undertake and complete expeditiously all actions necessary to achieve and maintain compliance with RCRA, CWA, and all applicable regulations promulgated thereunder;
3. Assess civil penalties against Defendant of up to \$25,000 per day, for each violation of the RCRA and CWA occurring before January 30, 1997, and up to \$27,500 per day, for each such violation that occurred on or after January 30, 1997;

4. Grant Plaintiff such other relief as the Court deems just and proper.

Respectfully submitted,

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